

(2013) 04 DEL CK 0246

In the Delhi High Court

Case No : Writ Petition (C) 2472 of 2013 and` CM Application 4698 and 5181 of 2013

Excel College of Technology

APPELLANT

Vs

All India Council for Technical Education

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 04 DEL CK 0246

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : A.K. Bajpai and Mr. M.F. Khan, for the Appellant; Amitesh Kumar, Advocate for AICTE, Mr. Santha Kumaran and Mr. Yogesh Kanna, Advocates for the State of Tamil Nadu, for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sistani, J.—Petitioner seeks quashing of the communication dated 10.4.2013 by which the request of the petitioner for extension of approval for the year 2013-14 has been rejected. Counsel for the petitioner submits that the order dated 10.4.2013 is vague and shows complete non-application of mind.

2. Mr. Amitesh Kumar, counsel for the respondent/AICTE, who had entered appearance on an advance copy, has clarified that the request of the petitioner had been declined as the college of the petitioner did not possess a certificate from DTCP, which is also a subject matter of another writ petition [WP(C) No. 4304/2012] pending in this Court, thus the petitioner was well aware of the reasons of rejection.

3. In the connected writ petition [WP(C) No. 4304/2012] this Court had issued notice to the State of Tamil Nadu, to state as to whether the DTCP certificate was necessary or not, to which a response has been produced today and a categorical answer has been given.

4. Since this communication lays down the entire criteria, I deem it appropriate to reproduce the same:

CHAPTER-VI.

CONTROL OF DEVELOPMENT AND USE OF LAND.

47. Use and development of land to be in conformity with development plan.- After the coming into operation of any development plan in any area, no person other than any State Government or the Central Government, or any local authority shall use or cause to be used, any land or carry out any development in that area otherwise than in conformity with such development plan:

Provided that the continuance of the use of any land for the purpose and to the extent for, and to which it is being used on the date on which such development plan comes into operation, may be allowed for such period and upon such terms and conditions as may be specified in such development plan.

47-A. Development of land in an area other than planning area.-(1) Any person intending to carry out any development on any land in an area other than planning area shall make an application in writing to the local authority for permission in such form and containing such particulars and accompany such documents as may be prescribed.

(2) The local authority shall before according permission under subsection (1), shall obtain the prior concurrence of the Director and shall also collect such fees at such rate as may be prescribed:

Provided that in the case of wet lands, the prior concurrence of the Collector of the District concerned is necessary.

(3) The Collector shall give his prior concurrence to the local authority under subsection (2), upon fulfillment of such guidelines as may be prescribed.

(4) Where any development of land has been carried out,-

(a) without permission required under this section; or

(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land has been duly revoked; or

(d) in contravention of any permission which has been duly modified.

the local authority shall exercise the powers of the appropriate planning authority under sections 56 and 57 with such modifications as may be necessary.

Explanation.-The term "wet land" in this section shall have the same meaning as in the Tamil Nadu Additional Assessment and Additional Water Cess Act, 1963 (Tamil Nadu Act 8 of 1963)

48. Restrictions on buildings and lands, in the area of the planning authority.-On or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette u/s 26, no person other than any State Government or the Central Government or any local authority, shall, erect any building or make or extend any excavation or carry out any mining or other operation, in, on, over or under any land or make any material change in the use of land or construct, form or layout any work except with the written permission of the appropriate planning authority and in accordance with the conditions, if any, specified therein.

5. Counsel for the petitioner submits that since the matter has now been clarified and having regard to the fact that the petitioner has already made an application for the certificate, in case the time is extended the certificate will be provided to the respondent.

6. Counsel for the respondent/AICTE has opposed this prayer of the petitioner firstly on the ground that such a statement was made in the connected writ petition, being W.P. (C)4304/2012, and three months time was sought on 31.7.2012, but such a certificate was not produced till date and the petitioner has enjoyed the interim order, which was granted based on the statement. Counsel for the respondent/AICTE further submits that subsequently the petitioner had taken a summersault and it has been submitted that such a certificate is not required.

7. Heard counsel for the parties. Having regard to the stand taken by the State of Tamil Nadu it is clear that a DTCP certificate is a necessary requirement. In a connected matter, being W.P. (C) 4304/2012, this court had granted three months" time from 31.7.2012 to the petitioner to procure the DTCP Certificate. Since the certificate was not received by the petitioner within three months period, the petitioner filed an application seeking a direction to the respondent not to insist on the DTCP approval as a pre-condition for grant of approval. The order dated 31.7.2012 passed in W.P. (C) 4304/2012 reads as under:

CM APPL. 8921/2012

1. By the present petition, filed under Article 226 of the Constitution of India, petitioner, inter alia, prays for a direction to the respondent to issue corrected co-education conversion order with the already approved total intake of 420 seats with five branches of UG Courses in Engineering and one branch of PG course in Management w.e.f. 2011-2012 onwards.

2. This matter was adjourned on three occasions to enable counsel for the parties to seek appropriate instructions in the matter.

3. Mr. Amitesh Kumar, learned counsel for the respondent, on the basis of instructions received from the Advisor (Approval), AICTE, and on the basis of the records from the Headquarters, submits that the only visible deficiency for not granting approval to the petitioner is that the petitioner has failed to submit

approval of Department of Town and Country Planning for the building being used to house the Excel College of Technology to the Regional Officer at Chennai. Learned senior counsel for the petitioner submits that the Trust has been running the petitioner institute from the year 2007 and no such requirement was pressed by the respondent and this requirement if at all is only necessary for a new institution and not an institution, which is already running. Learned counsel for the respondent submits that this is a basic requirement, which cannot be ignored, and more so as per Clause 1.7 of the Handbook the petitioner should have approached the respondent for approval only after the application form is complete in all respects.

4. Learned counsel for the respondent submits that the counselling has already commenced and the same will be over in the next seven days, which fact is not disputed by learned senior counsel for the petitioner.

5. Learned senior counsel for the petitioner submits that the petitioner is willing to give an undertaking to this Court that this deficiency pointed out by the respondent shall be cured within three months from today. The petitioner has filed an additional affidavit on record annexing letter dated 11.7.2009, addressed to the Secretary to Government, Government of Tamil Nadu, and the letter dated 12.6.2012, addressed to the President, Pallakapalayam Panchayat, Tiruchengode Taluk, Namakkal District, to show that steps have already been taken to procure the approval.

6. Having regard to the fact that petitioner institution is being run since the year 2007 and taking into consideration that the only deficiency is lack of the approval from Town and Country Planning, and also the undertaking given by the petitioner that the approval certificate will be provided to the respondent within three months from today, to balance the equity and to ensure that 420 students are not deprived of education in this academic session 2012-2013, the petitioner is permitted to carry out counselling for the academic session 2012-2013. It is made clear that in case the petitioner fails to provide approval certificate to the respondent within three months from today, this interim order would stand vacated and the students will be shifted to other approved institutions. This fact shall be brought by the petitioner to the knowledge of each student who seeks admission in the petitioner institution.

7. Application stands disposed of.

8. There is force in the submission made by counsel for the respondent. In the absence of DTCP a certificate, which is necessary requirement and having regard to the past conduct of the petitioner, such a concession cannot be granted to the petitioner, however, it would be open for the petitioner to make such a request to the respondent and in case respondent/AICTE are satisfied that non procurement of DTCP certificate is the only deficiency, they may consider the request of the petitioner sympathetically.

9. The writ petition and the application stand disposed of, in above terms. DASTI

to counsel for the parties.